

5 MUR#<u>5496</u>

July 25, 2004

Federal Elections Commission 999 E Street, NW Washington, DC 20463

To Whom It May Concern:

I am writing to request that the Federal Elections Commission (FEC) launch a formal investigation into the campaign of L. David Huffman, a candidate for U.S. Congress in North Carolina's Tenth District. There are two separate matters in which Mr. Huffman's campaign has very likely committed serious and egregious violations of federal election law. I will detail each of these issues and I request investigation into both.

1. Loan Impropriety

A review of Sheriff David Huffman's documents clearly indicates that he is improperly reporting the terms and conditions of the loans to his campaign for Congress. These loans total more than \$260,000.

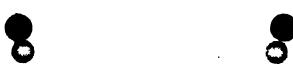
Sheriff Huffman has reported the following loans on his FEC disclosures:

January 16, 2004	\$6,647.01
March 1, 2004	\$100.00
March 30, 2004	\$100,000.00
May 10, 2004	\$50,000.00
June 9, 2004	\$10,000.00
June 17, 2004	\$100,000.00
TOTAL:	\$266,747.01

All reports state that each loan is from Sheriff David Huffman with no due date (term), no interest rate, and that each loan is NOT secured. By reporting in this manner, Huffman is stating that he provided this money without the use of a loan, line of credit or collateral.

A review of Sheriff Huffman's Financial Disclosure Statement filed with the U.S. House of Representatives, indicates that he does NOT have \$266,747.01 in liquid assets to loan to his campaign. Therefore, he would need to secure some sort of loan arrangement involving another party to make a contribution totaling that amount. In short, this money could NOT have come from himself as he is claiming.

The FEC has definite rules on the terms and conditions of a loan to a campaign and public disclosure ensures that candidates are conducting their campaign in a lawful manner. The Campaign Guide for Congressional Candidates and Committees, issued by the FEC, clearly states that candidates <u>MUST</u> disclose the details of their loans:



When a committee obtains a loan from a bank or other permissible lending institution (or the candidate obtains one on behalf of his or her committee), the committee must file Schedule C-1 with the report covering the period in which the loan was obtained.

On May 4, 2004, the FEC sent a letter to Sheriff Huffman's campaign treasurer citing a lack of required information on the loans:

Schedule C of your report fails to include information required by Commission Regulations. With every report submitted, you must provide the date incurred, the original source and amount of the loan, the due date, the interest rate, the cumulative payment, and the outstanding balance. In addition, if there are any endorsers or guarantors, their mailing address along with the name of their employer and occupation must be disclosed. Please amend your report to include the due date and interest rate.

A quote attributed to Sheriff Huffman in a Sunday, July 18, 2004 article in the *Hickory Daily Record* says that his loans are in fact tied to collateral and some lending institution:

"While Moretz has anted the most, Catawba County Sheriff David Huffman may be the local candidate with the most at stake.

He borrowed \$266,000, more than 60 percent of his \$423,543 raised, to help fund his campaign.

Huffman borrowed \$100,000 against his retirement earlier this year, he said. He says another \$166,000 came from a bank loan."

Had the loan been from a bank, there would have, at the very least, been an interest rate. Yet no interest rate is reported.

Sheriff Huffman is making two conflicting claims: 1.) that the loans are all from himself, and 2.) that some of the loans are from a bank. He does not have the liquid assets to make the loans himself, and there is no interest rate as to indicate the loans came from a bank. These facts raise serious questions about **BOTH** of Sheriff Huffman's conflicting claims.

2. Illegal In-kind Donation

During the course of his campaign, Sheriff Huffman has been selling raffle tickets for \$100 each with all proceeds going to his campaign for a chance to win a 2004 Ford Explorer automobile. One occasion on which the vehicle was documented was on May 29, 2004 at a festival in Hickory, North Carolina (see photograph). The Explorer was parked at Sheriff Huffman's campaign booth with a sign in front of it bearing Huffman's campaign logo and reading:

Win this Car!
Dale Jarrett Ford
2004 Ford Explorer
"Personally autographed by Dale Jarrett"
Retail values \$33,695 - winner pays taxes, fees & tag
Grand Prize Drawing - Primary Election Day, July 20, 2004
8:00pm at Huffman Headquarters - Need not be present to win
\$100.00 contribution to Huffman for Congress
561 Hwy. 70, SW
Hickory, NC 28602
828-322-3288

In order for Huffman's campaign to legally raffle the vehicle, the campaign would have had to purchase the Explorer. However, none of Huffman's FEC reports indicate that his campaign bought a Ford Explorer.

With this fact in mind, the only other option is for someone to have donated the Explorer as an in-kind contribution. If this is the case, a serious violation of campaign finance law has occurred. In regard to in-kind contributions, the Campaign Guide for Congressional Candidates and Committees states:

The value of an in-kind contribution—the usual and normal charge—counts against the same contribution limit as a gift of money. Additionally, like any other contribution, in-kind contributions count against the donor's limit for the next election, unless they are otherwise designated (see page 12 for more information on designating contributions). 100.52(d)(1) and 100.54.

Since an in-kind contribution is measured by the usual and normal charge, then the Explorer would be valued at the \$33,695 figure stated on the sign. This figure greatly exceeds the maximum allowable contribution permitted by an individual.

Additionally, as the sign advertised that the vehicle was from Dale Jarrett Ford and still bore a dealer license plate, it begs the question as to whether the Explorer constituted an illegal corporate donation from Dale Jarrett Ford.

Sincerely,

Max W. Baker

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Hickory, NC 28601

Signed and sworn to before me this ____ day of

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PRELIMINARY INFORMATION — ANSWER EACH OF THESE QUESTIONS

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ii. Did you, your spouse, or a dependent child receive "unearned" knowns of more than \$200 in the reporting period or hold any reportable asset worth more than \$1,000 at the end of the period? If yea, complete and attach Schedule II.	Xes Xes	□ %	V. Did you have any reportable agreement or arrangement with an outside entity? If yes, complete and attach Schedule V.	Now □ sey	X N
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EXCLUSION OF SPOUSE, DEPENDENT, OR TRUST INFORMATION — ANSWER EACH OF THESE QUESTIONS

nos is—Details regarding "quaimed bring integrated by the Committee on Standards of Official Conduct and certain other "excepted frusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or a dependent child? (See Instructions, Yes No X pages 10–11.)
EXEMPTION—Have you excluded from this report any other assets, "uneamed" income, transactions, or liabilities of a spouse or dependent child yes No X

CERTIFICATION — THIS DOCUMENT MUST BE SIGNED BY THE REPORTING INDIVIDUAL AND DATED

This Financial Disclosure Statement is required by the Ethics in Government Act of 1978, as amended. The Statement will be available to any requesting person upon written application and will be reviewed by the Committee on Standards of Official Conduct or its designee. Any individual who knowingly and willfully falsifies, or who knowingly and willfully falsifies, or who knowingly and willfully falsifies to the poort may be subject to did benables and criminal senctions (See 5 U.S.C. and 4. § 104 and 18 U.S.C. § 1001).

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List the source, type, and amount of earned income, including honoraria, from any source (other than your current employment by the U.S. Government) totalling \$200 or more during the current year to the filling date and, separately, the preceding calendar year. For a spouse, list the source and amount of any honoraria. SCHEDULE I—EARNED INCOME (INCLUDING HONORARIA)

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SCHEDULE II — ASSETS AND "UNEARNED" INCOME

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SCHEDULE III — LIABILITIES

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Report liabilities of over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent child. Mark the highest amount owed during the reporting period. Exclude: Any mortgage on your personal residence (unless there is rental income); loans secured by eutromobiles, household furniture, or appliances; and liabilities owed to a spouse, or the child, parent, or sibiling of you or your spouse. Report revolving charge accounts only if the balance at the close of the previous calendar year exceeded \$10,000.

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SCHEDULE IV — POSITIONS

an officer, director, trustee of an organization, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. Report all positions, compensated or uncompensated, held on or before the date of filing during the current calendar year and in the two prior years as

Exclude: Positions held in any religious, social, fraternal, or political entities; positions solely of an honorary nature; and positions listed on Schedule I.

Position Name of Organization	Boned on Directions Notional Sheeips & ASSUCIATION	RMEU COTOWBA COUNTY DIABETES ASSOCIATION		
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Name Law Report D. HUFFMAN identify the date, parties to, and general terms of any agreement or arrangement with respect to: future employment; a leave of absence du service; continuation or defetral of payments by a former or current employer other than the U.S. Government, or continuing participation in efft plan maintained by a former employer. SCHEDULE V—AGREEMENTS

Date	Parties To	Terms of Agreement
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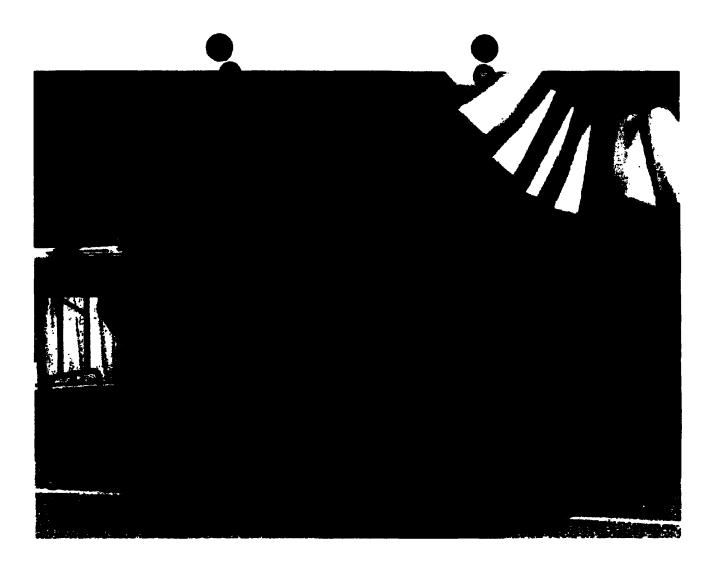
SCHEDULE VI—COMPENSATION IN EXCESS OF \$5,000 PAID BY ONE SOURCE

Report sources of such compensation received by you or your business affiltation for services provided directly by you during the two prior years. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any nonprofit organization if you directly provided the services generating a fee or payment of more than \$5,000. Exclude: Payments by the U.S. Government and any information considered confidential as a result of a privileged relationship recognized by law.

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CHAPTER 6 Other Reportable Receipts

This chapter describes campaign receipts that are not considered contributions and, therefore, are not subject to contribution limits; all receipts must nevertheless be reported by the campaign.

1. Bank Loans

Conditions

A candidate or his or her committee may obtain a loan, including a line of credit, from a bank, provided that the loan:

- Bears the bank's usual and customary interest rate for the category of loan involved;
- · Is evidenced by a written instrument;
- · is subject to a due date or amortization schedule; and
- is made on a basis which assures repayment (see below).
 100. 82(a).

If a loan fails to meet any of these conditions, then a prohibited contribution from the lending institution results.

Methods of Assuring Repayment

A loan is made on a basis which assures repayment if it is obtained using one or more of the following authorized methods of securing the loan:

Traditional Methods

A committee may use one of the following traditional methods of securing the loan, or a combination of the two:

Collateral. A loan may be secured using assets of the candidate or the committee, such as real estate, personal property, cash on deposit, certificates of deposit and stocks. The fair market value of the assets must, on the date of the loan, equal or exceed the amount of the loan and any senior itens. The committee must ensure that the bank has established a "perfected security interest" in the collateral (that is, has taken steps to legally protect its interest in the collateral in the event that the committee defaults on the loan). 100.82(a)(1)(ii)

the committee defaults on the loan). 100.82(e)(1)(i).

Note that if a candidate obtains a loan using assets jointly owned with his or her spouse, the amount of the loan may not be greater than the candidate's share of the property (usually one half); otherwise, a contribution from the spouse results. 100.52(b)(4).

Guarantees or Endorsements. An endorsement or guarantee of a bank loan is considered a contribution by the endorser or guarantor and is thus subject to the law's prohibitions and Ilmits on contributions. 100.82(e)(1)(ii).

Pledge of Future Receipts

If the committee pledges its future receipts as security for the loan, then the amount loaned by the bank may not exceed a reasonable estimate of anticipated receipts, based on documentation provided by the candidate or committee (such as cash flow charts or fundraising plans). 100.82(e)(2)(I) and (Ii). Future receipts might include, for example, anticipated contributions or interest income.

The committee must also set up a separate account for the receipt of funds piedged for the repayment of the loan. The account may be established with either the lending institution or a different depository. If the account is established at a depository other than the lending institution, then the committee must execute an assignment of the account's funds to the lending institution and notify the depository of the assignment. The loan agreement must require the committee to deposit the pledged funds into the account established for this purpose. 100.82

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Other Methods of Assuring Repayment

The Commission may, on a case-by-case basis, approve methods of assuring repayment other than those described above. 100.82(e)(3). See, for example, AO 1994-26. A committee should request an advisory opinion from the Commission before entering into a loan agreement that relies on alternative sources of repayment.

Schedule C-1

When a committee obtains a loan from a bank or other permissible lending institution (or the candidate obtains one on behalf of his or her committee), the committee must file Schedule C-1 with the report covering the period in which the loan was obtained.

If the loan is obtained by the committee (rather than by the candidate), the treasurer must sign the schedule and attach a copy of the loan or line of credit agreement. See Chapter 14. Schedule C-1 includes a statement to be signed by an officer of the lending institution certifying that the information provided by the committee is accurate and that the terms and conditions of the loan comply with FEC rules.

2. Brokerage Loans and Other Lines of Credit

Candidates may use funds derived from an advance on their brokerage account, credit card account or other line of credit to finance their campaigns, if the extension of credit is:

- In accordance with applicable law;
- Under commercially reasonable terms; and
- Made by persons who make such loans in the normal course of their business.
 100.83.

The candidate's authorized committee has the option of repaying loans derived from a candidate's brokerage account or other line of credit directly to the lending institution or to the candidate. 100.83(d). All such loans used in connection with the candidate's campaign must be reported by the committee. 100.83(e). The committee must report the loan from the candidate as a receipt and repayment of the loan to the candidate as a disbursement. 104.3(a)(3)(vii) and (b)(2)(iii)(A). See Chapter 14, Section 16 "Reporting Brokerage Loans and Other Lines of Credit."

3. Overdrafts

If a bank honors a check written by a political committee with insufficient funds in its checking or savings account, no contribution from the bank results as long as the overdraft:

- Is made on an account subject to automatic overdraft protection;
- Is subject to a definite interest rate which is the usual and customary rate; and
- Is subject to a definite repayment schedule.

100.82(d). An overdraft that does not meet the above conditions is a prohibited contribution. 114.2. Note that if the overdraft protection is based on a line of credit extended by the bank, draws on that line of credit must be disclosed on Schedule C-1, as discussed above.

4. Interest and Dividend Income

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Interest earned on invested funds and dividends earned on securities are not considered *contributions*. 2 U.S.C. §§434(b)(2)(J) and 434(b)(3) (G).

5. Offsets to Operating Expenditures

Offsets to operating expenditures, such as returns by vendors of deposits, refunds and rebates, are not considered contributions. Note, however, that rebates to campaigns must be offered in the ordinary course of business and on the same terms and conditions as those offered to nonpolitical entities. Otherwise, the rebate may be considered a contribution—a prohibited contribution if a corporation pays the rebate. See, for example, Advisory Opinions (AOs) 1996-2, 1994-10, 1987-24 and 1986-22.

6. Legal and Accounting Services

The value of legal and accounting services provided without charge in accordance with the guidelines described in the next chapter is not a contribution. 100.86 and 114.1(a)(2)(vii).

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GO TO CHAPTER 7





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FEDERAL ELECTION COMMISSION WASHINGTON, D.C. 2040

May 4, 2004

Michael A. Shorrill, Treasurer Huffman for Congress PO Box 442 Newton, NC 28658

Response Due Dute: June 3, 2004

Identification Number: C00398776

Reference:

April Quartedy Report (1/1/04-3/31/04)

Dear Mr. Sherrill:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. An adequate response must be received at the Commission by the response date noted above. An itemization of the information needed follows:

-Schedule C of your report fails to include information required by Commission Regulations. With every report submitted, you must provide the date incurred, the original source and amount of the loan, the due date, the interest rate, the amnulative payment, and the outstanding balance. In addition, if there are any endorsets or guarantors, their mailing address along with the same of their employer and occupation must be disclosed. Please amend your report to include the due date and interest rate. (11 CFR §§§ 100.52(a), (00.52(b) and 104.3(d))

Unlike previous election cycles, you will not receive an additional notice from the Commission on this matter. Adequate responses received on or before this date will be taken into consideration in determining whether sudit action will be initiated. Requests for extensions of time in which to respond will not be considered. Failure to provide an adequate response by this date may result in an audit of the committee. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking anforcement action.

Electronic filers must file amendments (to include statements, designations and





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High stakes

Candidates ante up \$1.4 million of their own money in Republican primary. BY ANDREW MACKIE
RECORD STAFF WRITER
Sunday, July 18, 2004

HICKORY -- Republican candidates in the 10th District Congressional race are playing a high-stakes game of political poker, betting their own money that they'll be victorious this week.

The four candidates combined to raise more than \$2.3 million as of the end of June. Of that amount, \$1.4 million came from their pockets.

Leading the group is George Moretz, chairman of Carolina Mills. He had raised nearly \$1 million, of which \$760,000 he contributed or loaned his campaign.

Since the beginning of the month, Moretz invested another \$140,000 into his campaign.

While Moretz has anted the most, Catawba County Sheriff David Huffman may be the local candidate with the most at stake.

He borrowed \$266,000, more than 60 percent of his \$423,543 raised, to help fund his campaign.

Huffman borrowed \$100,000 against his retirement earlier this year, he said. He says another \$166,000 came from a bank loan.

Another politician with much in the pot is N.C. Rep. Patrick McHenry, who loaned his campaign \$96,000 of the \$266,000 raised.

Sandy Lyons, former chief executive officer of Corning Cable Systems, loaned his campaign \$345,000 of the \$656,000 raised.

For Moretz, his investment was a little more money than initially expected.

"It's probably more money than I anticipated when I entered the race, " he said. Irritated by U.S. Rep. Cass Ballenger's support of some free trade agreements, Moretz threw his hat in the ring last fall.

He did so with little name recognition. In facing David Huffman, he opposes someone with 26 years of political experience.

"It is quite a challenge to overcome that head start," Moretz said.

He has relied on television and radio advertising for months.

Moretz said his business duties deny him the ability to perform grass-roots campaigning.

"I've had to use the media to get the message out," he said. "My campaign has probably been more expensive than the others for that reason. I want to say that I've done everything that I could to win this race."

Huffman said his personal investment is a display of commitment.

"I've received money from people who can't afford to give me money," Huffman said.

"I feel obliged to put my money in with theirs."

Huffman said the investment is a show of confidence that he will win.

Elected officials can hold fund-raisers to pay themselves back the money they loaned their campaigns, but only up to \$250,000.

"We have to take a chance to win and make a difference," Huffman said.

McHenry, 28, sald the money put a burden on him financially.

"I want people to see that I'm contributing as much time and as much money as I can," he said.

"It certainly is a risk, but I believe so much in what I'm fighting for, I'm willing to put a jot on the line."

Lyons started and sold his own business in the 1990s, so putting his share of the money up wasn't as taxing. He doesn't view it as a gamble.





"I consider it a commitment to the campaign," he said. "It's not a good business decision, but it's the right decision."

The candidates understand the winner could spend years in office serving the Republican-dominated district. Only two politicians, both Republicans, have represented the 10th District during the past 40 years.

U.S. Rep. Cass Ballenger has served since 1986. Before him, Jim Broyhill held the position for 24 years.

Neither was ever seriously threatened in re-election bids.

This year's Democratic candidates, John Cole and Anne Fischer, on the other hand, have yet to file federal campaign reports, meaning they have not raised at least \$5,000.